

**Agreement between the City and County of Honolulu and the  
State of Hawaii, Department of Education for the  
West O'ahu /Farrington Highway Guideway Design-Build Contract**

FEB 08 2011

THIS AGREEMENT is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2010 ("Construction Agreement"), by and between the DEPARTMENT OF EDUCATION, an agency of the State of Hawaii, whose mailing address is P.O. Box 2360, Honolulu, Hawaii 96804 (hereinafter the "DOE"), and the CITY AND COUNTY OF HONOLULU, a municipal corporation of the State of Hawaii, whose principal place of business and mailing address is Honolulu Hale, 530 South King Street, Honolulu, Hawaii 96813 (hereinafter the "CITY"). The DOE and the CITY are hereinafter collectively referred to as the "Parties," and either may be referred to individually as a "Party," all as governed by the context in which such words are used.

WITNESSETH THAT:

WHEREAS, pursuant to Hawaii Revised Statutes Section 51-1 (1993), the CITY is authorized to construct, extend, own, maintain, and operate mass transit systems on the island of O'ahu;

WHEREAS, pursuant to Ordinance No. 07-001, the CITY is authorized to implement the Locally Preferred Alternative ("LPA"), which is a fixed guideway transit system between Kapolei and the University of Hawaii ("UH") at Manoa, provided that a Minimum Operable Segment ("MOS") of the LPA is constructed within financial constraints;

WHEREAS, Resolution No. 08-261 approved the MOS beginning at UH-West O'ahu (near the future Kroc Center), via Farrington Highway and Kamehameha Highway (adjacent to Pearl Harbor), to Aolele Street serving the Honolulu International Airport, to Dillingham Boulevard, to Nimitz Highway, to Halekauwila Street, and ending at Ala Moana Center;

WHEREAS, the MOS includes the limits of the West O'ahu/Farrington Highway Section of the Honolulu High-Capacity Transit Corridor Project, as described in Exhibit "A," attached hereto and incorporated herein (hereinafter "WOFH Project");

WHEREAS, the WOFH Project includes properties controlled by the DOE and owned by the CITY (Tax Map Key No. 9-4-008:20) and the State of Hawaii (Tax Map Key No. 9-4-008:25) (hereinafter "Properties");

WHEREAS, the DOE owns and operates facilities located within the Properties that will require removal, replacement, and/or modification in order to construct the WOFH Project;

WHEREAS, the DOE and the CITY mutually recognize the need for entering into this Construction Agreement to designate and set forth the responsibilities of each Party related to mitigation measures to reduce the impact of construction of the WOFH Project on the Properties to DOE facilities; and

WHEREAS, the DOE and the CITY desire to enter into this Construction Agreement and authorize their designated officers to do so;

NOW, THEREFORE, in and for the consideration of the above recitals, and the mutual promises hereinafter set forth, the sufficiency and adequacy of which are hereby acknowledged, and intending to be legally bound thereby, the DOE and the CITY mutually agree as follows:

1. Purposes of Construction Agreement. The DOE and the CITY have entered into this Construction Agreement for the following primary purposes:
  - a. To provide for the DOE's participation in the WOFH Project, specifically related to mitigation measures to reduce the impact of construction of the WOFH Project on the Properties to DOE facilities;
  - b. To describe the respective responsibilities of the DOE and the CITY and establish cooperative procedures that will achieve the objectives identified herein; and
  - c. To establish mechanisms for resolving any disputes between the DOE and the CITY arising in connection with the construction of the WOFH Project on the Properties.
2. Premises. The CITY desires to occupy a portion of the Properties previously controlled by the DOE, as delineated on the map identified as "ROW Needed", dated October 12, 2010, which map is attached hereto and incorporated herein as Exhibit "B," attached hereto and incorporated herein (hereinafter "Premises"), for the construction, operation, and maintenance of a fixed guideway mass transit system constructed as a part of the WOFH Project.
3. Consideration. In consideration for the CITY's use of the Premises, and to mitigate the impacts of the WOFH Project on Waipahu High School ("WHS"), the CITY, by this Construction Agreement, agrees to the following mitigation measures ("Transit Mitigation Measures"):
  - a. The CITY agrees to replace two existing portable classroom buildings (one single-classroom building and one double-classroom building) located within the Properties, as identified in Exhibit "D," attached hereto and incorporated herein, with two new portable classroom buildings (one single-classroom building and one double-classroom building), at a new location within the WHS campus, as identified in Exhibit "C," attached hereto and incorporated herein.

Both new portable classroom buildings shall be equipped with interior and exterior lighting fixtures, air conditioning units, plumbing, fire alarm, security system and telecommunication connections equivalent to those in the existing portable classroom buildings. The fire alarm and

telecommunication connections must be compatible with WHS' host system. The air conditioning system will comply with DOE Policy 6700 relating to ASHRAE specifications. Before demolition of any existing portable classroom buildings can begin, the CITY shall complete the construction of all new portable classroom buildings as described in this Section 3.a;

- b. The CITY agrees to provide a permanent air conditioning system appropriate for one double classroom in Building I of the WHS campus. Provision includes all construction and sufficient power supply and infrastructure to operate the system, and will comply with DOE Policy 6700 relating to ASHRAE specifications;
- c. The CITY agrees to provide a permanent air conditioning system appropriate for portable classrooms TB1, TB2, P14, P15, and P17. Provision includes all construction and sufficient power supply and infrastructure to operate the system, and will comply with DOE Policy 6700 relating to ASHRAE specifications;
- d. The CITY agrees to replace the air conditioning system appropriate for portable classroom P16. Provision includes all construction and sufficient power supply and infrastructure to operate the system, and will comply with DOE Policy 6700 relating to ASHRAE specifications;
- e. The CITY agrees to construct a new access road connecting the existing inter-campus roadway to the cane haul road with appropriate design features and to include four (4) cattle gates to prevent unauthorized vehicle use of the new access road and the Traction Power Substation, as identified in Exhibit "D";
- f. The CITY plans to construct and maintain a power substation facility of approximately 3,200 square feet. The area will be accessed by the CITY through a school gate and the new access road identified in Section 3.e, above. Security fencing will surround the Traction Power Substation site with a locked access gate into the area from the new access road. Both the gate and the locked Traction Power Substation will be controlled by electronic card key access and monitored by the CITY. During school hours, the CITY will notify the WHS administration when access to the Traction Power Substation site for inspection, maintenance, emergencies or repairs are required to avoid any conflicts on the roadway and to maintain school security. Access during non-school hours will be limited to emergency access only or through prior arrangement with the WHS administration;
- g. The CITY agrees to construct a new textured retaining wall with a protective anti-graffiti coating that conforms to the existing retaining wall,

as identified in Exhibit "E," attached hereto and incorporated herein, and shall be solely responsible for maintaining the new retaining wall;

- h. The CITY shall be solely responsible for all costs and expenses incurred in connection with the Transit Mitigation Measures as set forth herein, including, but not limited to, all design, planning, engineering, and construction. Except for maintenance of the new retaining wall identified in Section 3.g, above, the CITY shall not be responsible for maintenance of the Transit Mitigation Measures after they are constructed or installed on the WHS campus by the CITY;
- i. The CITY agrees to relocate on the WHS campus an existing agricultural plot that will be demolished as a result of the construction of two new portable classroom buildings identified in Section 3.a, above. The location of the relocated agricultural plot is specified in Exhibit "C." The size of the relocated agricultural plot will be approximately 1,000 square feet with a flat ground sprinkler system and twelve (12) to eighteen (18) inches of topsoil and compost. Any existing concrete at the designated location will be removed. Prior to installation of the relocated agricultural plot, environmental testing will be conducted by the CITY on the designated location. If warranted, appropriate remediation will be undertaken following discussions between DOE and the CITY to negotiate a mutually acceptable resolution to allow for the installation of the relocated agricultural plot at the designated location;
- j. The CITY agrees to replace the existing asphalt path that will be demolished as a result of the construction of two new portable classroom buildings identified in Section 3.a, above, with a concrete walkway that complies with the Americans with Disabilities Act of 1990 (ADA);
- k. The CITY agrees, if the CITY determines that the location of an existing speaker pole negatively impacts the WOFH project, to replace the existing speaker pole located within the Premises to another location within WHS' athletic complex, with appropriate power service. This improvement shall be subject to the input and approval of WHS;
- l. The CITY agrees to replace the existing asphalt path located between the proposed new retaining wall identified in Section 3.g, above, and the existing athletic scoreboard with a concrete, ADA-compliant walkway; and
- m. The CITY agrees to replace fencing impacted by the WOFH Project and to install landscaping along the exterior of the replacement fence line (roadside) as identified in Exhibit "D." The landscaping and fencing are to be similar to the existing landscaping, and will take into account that the

area is WHS' most prominent public feature. These improvements shall be subject to the input and approval of WHS;

4. Review of Design Plans and Specifications. The CITY agrees to submit design plans and specifications for the Transit Mitigation Measures to the DOE. The DOE shall have an opportunity to review, comment on, and accept the design plans and specifications for the Transit Mitigation Measures prior to implementation of the Transit Mitigation Measures as provided in Section 5, below.

5. Prompt Review Required. The CITY and the DOE acknowledge that the timely acceptance of design plans and specifications is critical to maintaining the WOFH Project schedule. The DOE shall have thirty (30) calendar days or another mutually agreed upon time period to review and comment upon the design plans and specifications for the Transit Mitigation Measures after they are submitted by the CITY to the DOE for acceptance. The DOE agrees that its design reviews and acceptance shall not be unreasonably withheld, conditioned, or delayed. If the DOE fails to act or object to design plans and specifications within thirty (30) calendar days, or other mutually agreed upon time period, after they are submitted by the CITY to the DOE, the design plans and specifications shall be deemed acceptable to the DOE without further action by the CITY.

6. Final Work Scope. The CITY and the DOE agree that the final design plans and specifications accepted by the DOE shall constitute the final work scope for the Transit Mitigation Measures.

7. Time of the Essence. The CITY and the DOE acknowledge and agree that time is of the essence as to each and every obligation under this Construction Agreement. It is stipulated, however, that this Construction Agreement shall have a term limitation of thirty-six (36) months from the date of execution. After such time, the Construction Agreement may be re-negotiated and modified by written instrument or terminated in full.

8. Compliance with Laws. The CITY shall complete the Transit Mitigation Measures in accordance with all applicable Federal, State, and County laws.

9. CITY Funds. The CITY shall provide all funds necessary for completion of the Transit Mitigation Measures. The DOE is under no obligation to fund the Transit Mitigation Measures.

10. No Third-Party Agreements. Except as otherwise authorized in writing by the DOE, the CITY shall not execute any contract or obligate itself in any manner requiring action/approval from the DOE. The CITY will be responsible for payment of any third-party contractor retained by the CITY.

11. No Obligation to Third Parties. There are no intended third-party beneficiaries to this Construction Agreement. It is expressly understood that the enforcement of the terms and conditions of this Construction Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the DOE and the CITY, and nothing contained in this Construction

Agreement shall give or allow any legal or equitable remedy, claim, or right of action by any third person under this Construction Agreement. It is the express intention of the DOE and the CITY that any third person who receives benefits under this Construction Agreement shall be deemed an incidental beneficiary only.

12. Dispute Resolution. The DOE and the CITY shall resolve all disputes regarding all items in this Construction Agreement at the lowest staff level possible. Disputes subject to this provision include, but are not limited to, the following: physical impacts, safety and operational impacts, long-term WOFH Project impacts, regulatory impacts, design review and approval, personnel, additional rights-of-way, credits for funds expended, and preparation of additional intergovernmental agreements necessary to implement this Construction Agreement. In the event the DOE and the CITY are unable to resolve disputes at the staff level, the Chief of the Rapid Transit Division, Department of Transportation Services, City and County of Honolulu, and the Public Works Administrator, Facilities Development Branch, Department of Education, State of Hawaii, shall resolve disputes. In the event the DOE and the CITY cannot resolve disputes at that level, the matter shall be referred to the Director, Department of Transportation Services, City and County of Honolulu, and the Superintendent, Department of Education, State of Hawaii, for resolution.

13. Binding Effect. All provisions contained in this Construction Agreement shall be binding upon and inure to the benefit of the DOE and the CITY, their successors and permitted assigns, and officers, agents, and employees or any person acting for and on their behalf.

14. Singular, Plural, and Gender. All words used herein in the singular number shall extend to and include the plural. All words used to describe any gender shall extend to and include all genders.

15. Severability. The provisions of this Construction Agreement shall be severable, and any invalidity, unenforceability, or illegality of any provision or provisions of this Construction Agreement shall not affect any other provision or provisions of this Construction Agreement, and each term or provision of this Construction Agreement shall be construed to be valid and enforceable to the full extent permitted by law.

16. Assignment. This Construction Agreement is binding upon the DOE and the CITY and any agency of government that may assume the rights and obligations of a Party with respect to the Construction Agreement; otherwise, the Construction Agreement is non-transferable and non-assignable in whole or in part, except by an instrument, in writing, signed by the DOE and the CITY.

17. Headings. The headings and captions herein are for convenience or reference only and are not intended to fully describe, define, or limit the provisions of this Construction Agreement to which they may pertain.

18. Drafting of Agreement. The DOE and the CITY expressly acknowledge that this Construction Agreement is the product of mutual negotiations; that each has had ample opportunity to read the Construction Agreement; that each has had any questions or concerns

completely explained by independent counsel and that each is satisfied that this Construction Agreement accurately conveys the meanings and intents it chooses to be bound by; and, it is expressly agreed that neither Party shall be construed to be the primary drafter thereof.

19. Survivability. All obligations arising prior to termination of the Construction Agreement and not fully discharged, all obligations of the DOE and the CITY to be completed following termination of the Construction Agreement, and all paragraphs of the Construction Agreement allocating liability between the DOE and the CITY, shall survive the termination of the Construction Agreement.

20. Indemnification. The CITY shall hold harmless and indemnify the DOE from and against all claims, demands, liabilities, suits, actions, judgments, costs, and expenses for loss, injury, death, or damage under tort, contract or otherwise, including, but not limited to, claims of property damage, personal injury, or death of persons, and economic loss, whenever such loss, injury, death, or damage arises out of or results from the acts or omissions of the CITY or its employees, and its contractors or its contractor's employees, agents, or subcontractors relating to this Construction Agreement; provided, however, that the CITY shall not be responsible for indemnifying the DOE from and against any claims or damages arising out of the negligence or intentional misconduct of the DOE.

21. Insurance. The CITY shall procure or cause to be procured and maintained the following insurance for the term of this Construction Agreement for activities engaged in on the Properties under this Construction Agreement.

a. Workers Compensation and Employers Liability Insurance. Workers compensation coverage shall be in accordance with State statutes. Employers liability coverage shall provide limits of not less than \$100,000 each accident for bodily injury by accident or \$100,000 each employee, \$500,000 aggregate, for bodily injury by disease.

b. Commercial General and Umbrella Liability Insurance. Commercial general liability ("CGL") and if necessary commercial umbrella insurance with a limit of not less than \$5,000,000 each occurrence, and general aggregate. CGL insurance shall cover liability arising from premises, operations, independent Contractors, products-completed operations, personal injury and advertising injury, and contractual. The policy(ies) shall include the State of Hawaii and the DOE as additional insureds.

c. Business Automobile and Umbrella Liability Insurance. Business auto liability (including no-fault coverage) and if necessary, commercial umbrella liability insurance with a limit of not less than \$1,000,000 each accident. Such insurance shall cover liability arising out of any auto (including owned, hired, and non-owned autos) used in the performance of activities under this Construction Agreement. If necessary, the policy shall be endorsed to provide contractual liability coverage.

The CITY may, at its sole discretion, elect to self-insure any and all insurance it is required to provide hereinabove.

22. Cost of Litigation. In case the DOE shall, without fault on its part, be made a party to any litigation commenced by or against the CITY in connection with this Construction Agreement, the CITY shall pay all reasonable costs and expenses incurred by or imposed on the DOE, including reasonable attorneys' fees.

23. Entire Agreement; Amendment. This writing embodies the whole agreement and understanding of the DOE and the CITY. There are no promises, terms, conditions, or obligations other than those contained herein, and this Construction Agreement shall supersede all previous communications, representations, or agreements either verbal or written, between the DOE and the CITY pertaining to the matters contained in the Construction Agreement. This Construction Agreement cannot be modified except by an instrument, in writing, signed by the DOE and the CITY.

IN WITNESS WHEREOF, the DOE and the CITY have caused these presents to be executed the day and year first above written.

CITY AND COUNTY OF  
HONOLULU



By: ~~Rix Maurer III~~, Director  
Department of Budget & Fiscal Services

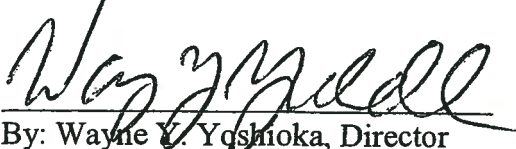
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DEPARTMENT OF EDUCATION



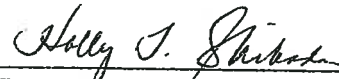
By: Kathryn S. Matayoshi  
Superintendent

APPROVED AS TO CONTENT:



By: Wayne Y. Yoshioka, Director  
Department of Transportation Services

APPROVED AS TO FORM:



Deputy Attorney General

APPROVED AS TO FORM  
AND LEGALITY:



Deputy Corporation Counsel



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## **EXHIBIT "A"**

### **WOFH Project Description**

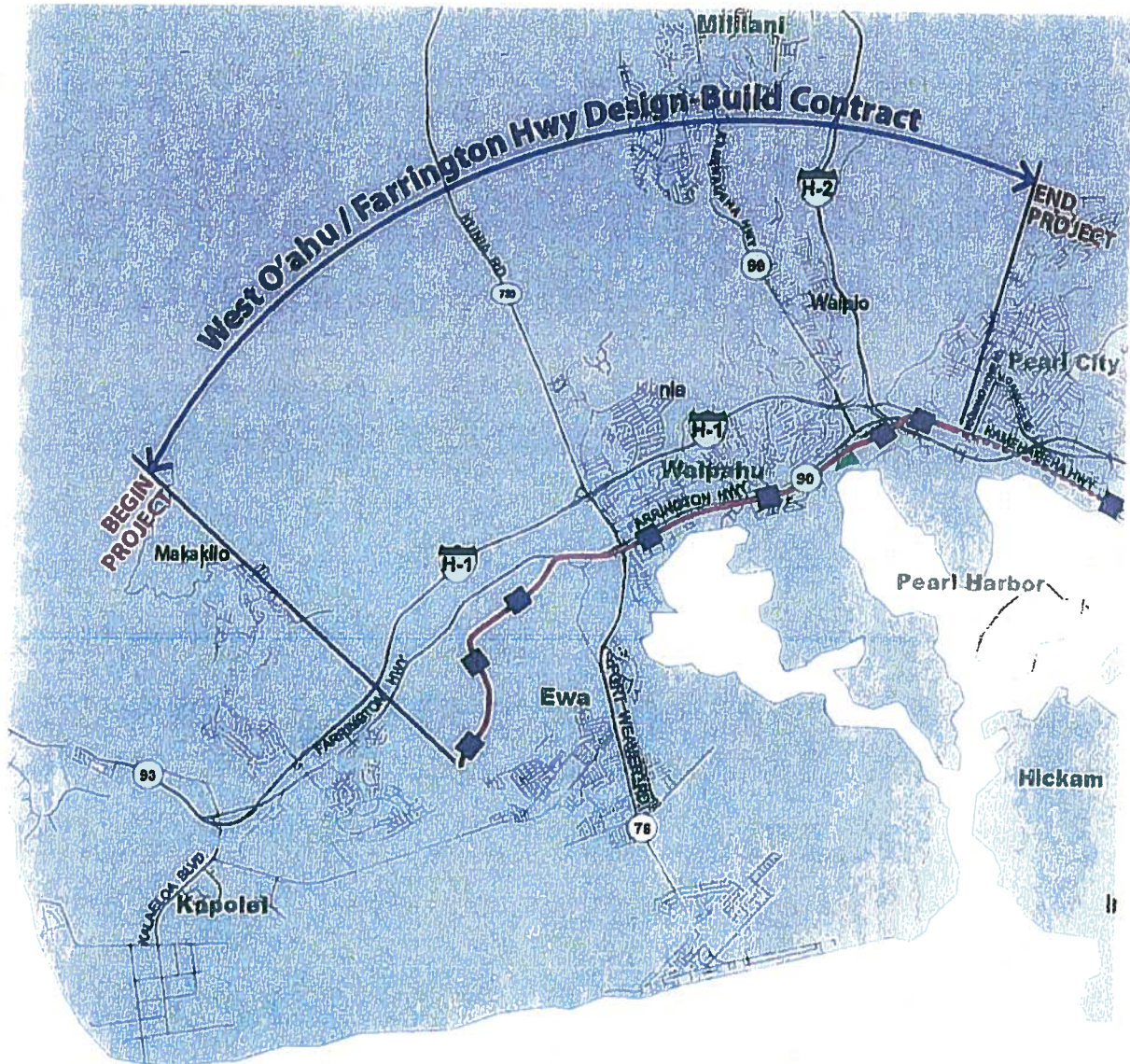
The WOFH Project will include, but is not limited to, the design and construction of a portion of the Honolulu High Capacity Transit Corridor Project ("HHCTCP") guideway alignment from its initial station at East Kapolei and continuing in the Koko Head direction approximately 6.8 miles to a point just east of the planned Pearl Highlands station. This portion of the HHCTCP guideway is identified as the "West O'ahu/Farrington Highway Guideway Design-Build Contract." The guideway is mostly comprised of a two-track aerial structure with a short segment of the guideway at grade. Construction of the guideway along this alignment requires utility relocations, reconfiguration, and reconstruction of the Farrington Highway median and left turn pockets, traffic signal relocations, roadway widening, construction of an access road through the planned community of Ho'opili, removal/relocation of existing landscaping and installation of temporary landscaping, box culvert construction, new retaining walls, associated grading, and other work.

The WOFH Project starts at the East Kapolei Station in the vicinity of the intersection of the proposed East-West Road and along the Koko Head side of North-South Road. The route continues northward parallel to North-South Road towards the proposed UH-West O'ahu Station site. The alignment then turns to the east across Kaloi Channel and continues through the planned community of Ho'opili until reaching Farrington Highway. The alignment continues in the Koko Head direction along the mauka side of the rural section of Farrington Highway. The guideway alignment crosses into the median of Farrington Highway in the vicinity of Fort Weaver – Kunia Road where Farrington Highway has been improved to two through lanes in each direction with a center median. The alignment continues along the median until crossing the outbound lanes near Waipahu High School.

Approaching Leeward Community College ("LCC"), the guideway alignment transverses from the median of Farrington Highway to the makai side of the highway where it transitions to an at-grade guideway section with retaining walls and under crossing structures. The alignment continues at-grade adjacent to the proposed Maintenance & Storage Facility site and transitions to an aerial guideway structure just past LCC where it crosses the H-1/H-2 (Waiawa) Interchange. The alignment then turns in an easterly direction to parallel Kamehameha Highway as it approaches the proposed Pearl Highlands station ending approximately 400-feet in the Koko Head direction of the station.

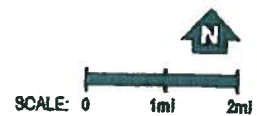
## EXHIBIT A

### Project Map



#### LEGEND :

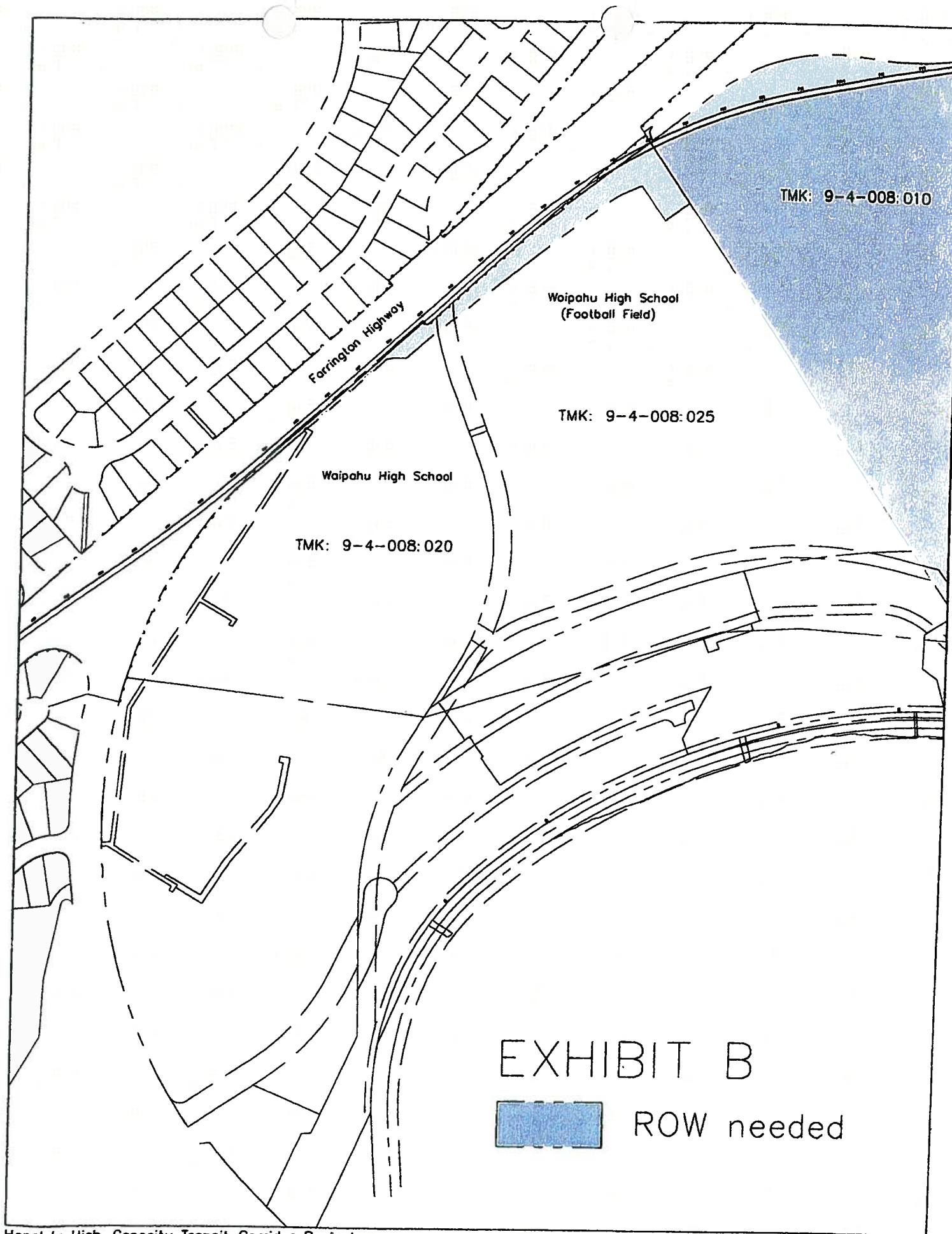
- Proposed Alignment
- Proposed Station Locations
- HDOE - Hawaii Department of Education - Waipahu High School



**HONOLULU HIGH-CAPACITY TRANSIT CORRIDOR PROJECT**  
**West O'ahu / Farrington Hwy Design-Build Contract**  
**Hawaii Department of Education - Waipahu High School**

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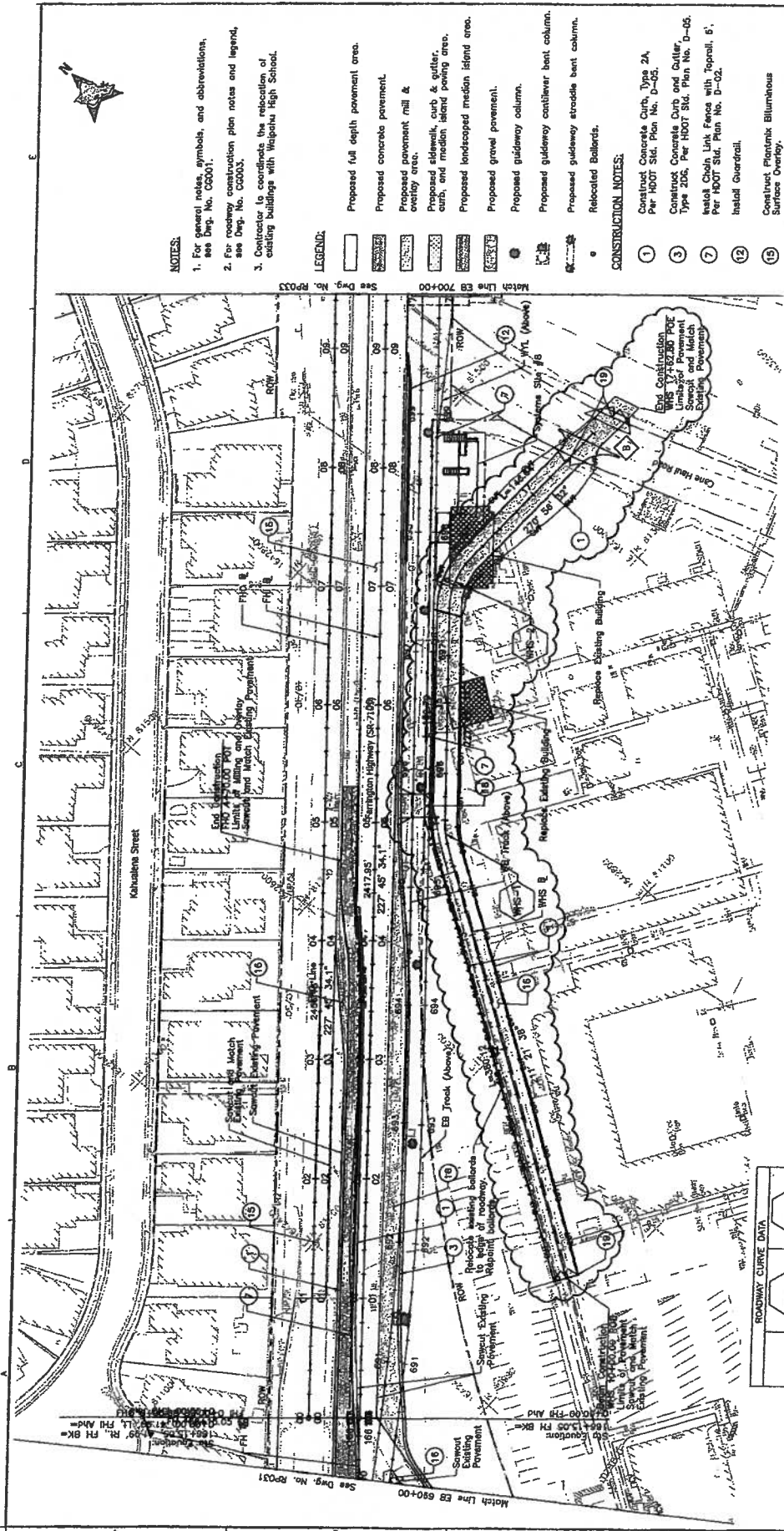
# EXHIBIT C

Proposed Waipahu High School  
Portable Classroom Locations  
May 28, 2010

- Proposed Single Classroom Portable Building Location
- Proposed Double Classroom Portable Building Location
- Proposed Concrete Sidewalk / Classroom Access
- Proposed Agriculture Plot Location

## LEGEND





**NOTES:**

1. For general notes, symbols, and abbreviations, see Dep. No. C0001.
2. For roadway construction plan notes and legend, see Dep. No. C0003.
3. Contractor to coordinate the relocation of existing buildings with Waiolu High School.

**LEGEND:**

- Proposed full depth pavement area.
- Proposed concrete pavement.
- Proposed pavement mill & overlay area.
- Proposed sidewalk, curb & gutter, curb, and median island paving area.
- Proposed landscaped median island area.
- Proposed gravel pavement.
- Proposed guideway column.
- Proposed guideway catenary bent column.
- Proposed guideway straddle bent column.
- Relocated Ballards.

**CONSTRUCTION NOTES:**

1. Construct Concrete Curb, Type 2A, Per HDOT Std. Plan No. D-05.
2. Construct Concrete Curb and Gutter, Type 206, Per HDOT Std. Plan No. D-05.
3. Install Chain Link Fence with Toprail, 6', Per HDOT Std. Plan No. D-02.
4. Install Guardrail.
5. Construct Plantain Biluminous Surface Overlay.
6. Construct Plantain Biluminous Pavement.
7. Install Double Swing Drive Gate.
8. Install Cattle Gate.

**EXHIBIT D**

ROADWAY CURVE DATA	
	WIS-1
A	18' 23" 56.0"
R	43' 10' 57.6"
T	80.00'
C	8.65'
Lc	17.11'
	45.22'

<b>BID DOCUMENT</b> <b>NOT FOR CONSTRUCTION</b>		<b>HONOLULU HIGH-CAPACITY TRANSIT CORRIDOR PROJECT</b> CITY & COUNTY OF HONOLULU - DEPARTMENT OF TRANSPORTATION SERVICES - NMD TRANSIT DIVISION		<b>WEST OAHU/FARRINGTON DESIGN-BUILD</b> <b>ROADWAY CONSTRUCTION PLAN</b>	
Drawn: _____ Checked: _____ Approved: _____ Date: 09-11-09	Project Consultant: <b>PARSONS</b> 1000 Bishop Street, Suite 2200 - Honolulu, HI 96813 For interested parties, original plans are kept at 1000 Bishop Street, Suite 2200 - Honolulu, HI 96813	Drawing No.: RPD32 Scale: 1"=40' Page No.: 135 of 312	EB 690+00 TO EB 700+00		



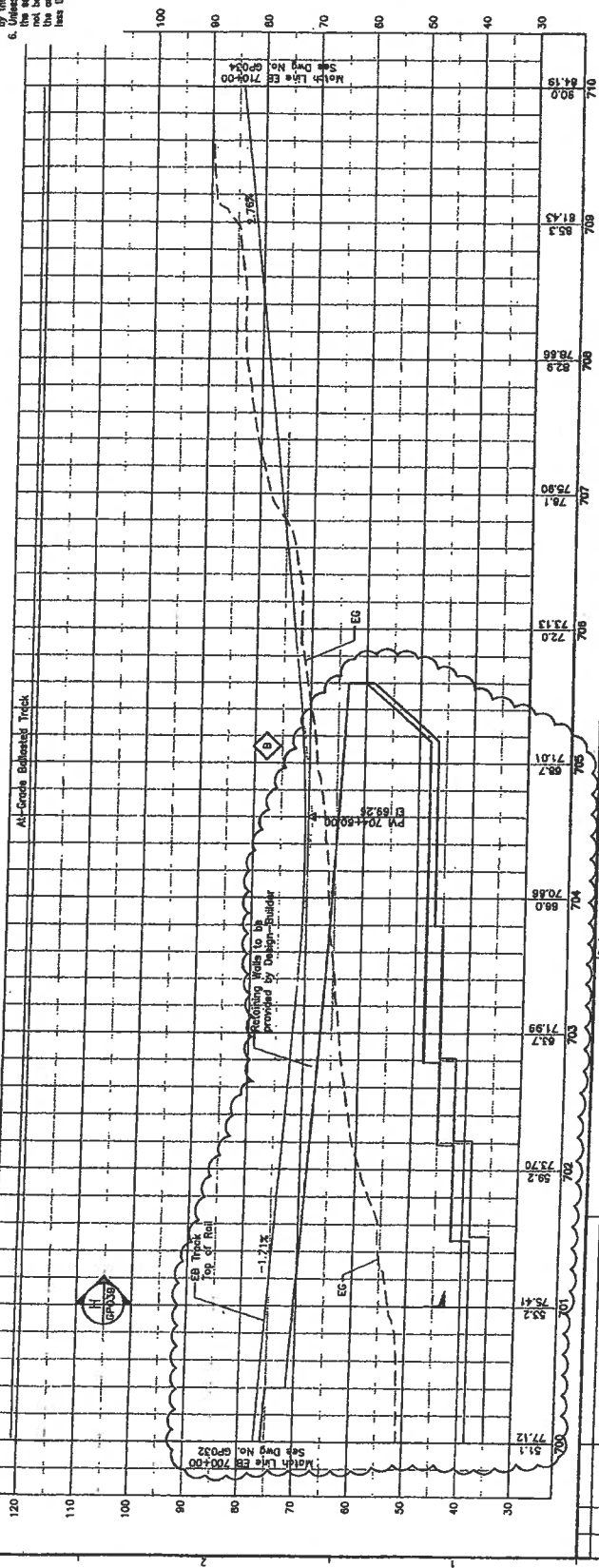
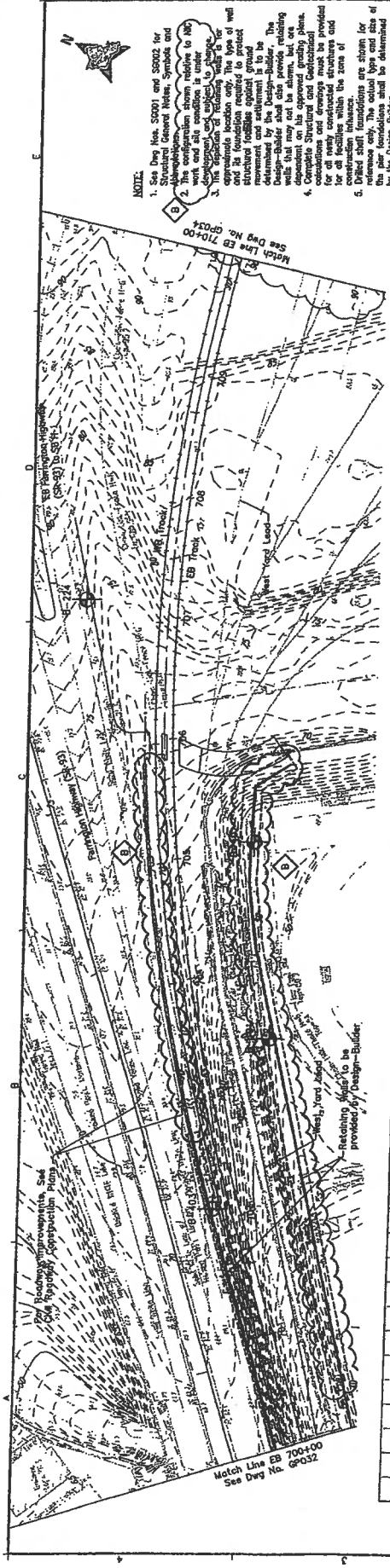


EXHIBIT E



- NOTE:
1. See Dwg Nos. S0001 and S0002 for Structural General Notes and Specifications.
  2. The configuration shown relative to the ground surface is under construction and is subject to change.
  3. The location of retaining walls is for approximate location only. The type of wall structure and its location is to be determined by the Design-Builder. The walls shall be designed to provide retaining for the rail bed and shall be dependent on the approved grading plans.
  4. Complete Structural and Geotechnical design and drawings must be provided for all facilities within the zone of construction influence.
  5. Retaining walls are shown for the rail bed and shall be determined by the Design-Builder.
  6. The rail bed shall not be less than 8-foot by 8-foot, and the enclosed detail shall not be less than 8-foot in diameter.

<b>BID DOCUMENT</b> <b>NOT FOR CONSTRUCTION</b>		<b>HONOLULU HIGH-CAPACITY TRANSIT CORRIDOR PROJECT</b> CITY & COUNTY OF HONOLULU - DEPARTMENT OF TRANSPORTATION SERVICES - MAJOR TRAFFIC DIVISION Subcontract:		<b>WEST O'AHU/FARRINGTON DESIGN-BUILD</b> <b>STRUCTURAL</b> <b>PLAN &amp; PROFILE</b> EB 700+00 TO EB 710+00	
Project: D. Yonah Design: T. Cochran Checked: T. Cochran Approved: A. Borel Date: 04-03-09		Prime Consultant: <b>PB PARSONS BRINCKERHOFF</b> 1000 Riecke Street, Suite 200 - Honolulu, HI 96813 For reduced price, subject to the terms in the contract.		Contract No.: 100-1200 CADD File: WF-001-GRP033 Drawing Title: GRP033 Scale: 1"=10' H, 1"=10' V Page No.: 54 of 209	